

REMARKS

This Amendment in RCE is being filed concurrently with a Request for Continued Examination. Claims 1 and 14 have been amended.

At the outset, Applicant wishes to thank Examiner Amari for the courtesies extended to Applicants' representatives during the August 7, 2006 telephonic interview. The substance of the interview is incorporated in the following remarks.

Summary of the Office Action

In the Office Action, claim 1 was objected because of two informalities.

Claims 1 and 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,932,872 to *Price*.

Claims 2-4, 8 and 15 are allowed.

Summary of the Response to the Office Action

Applicant has amended claims 1 and 14. Claims 5-7 and 9-13 have been withdrawn. Applicant thanks the Examiner for the indication that claims 2-4, 8, and 15 are allowed. Accordingly, claims 1-15 are pending with claims 1-4, 8, and 14-15 under consideration.

Objection to the Claims 1 and 14

Claims 1 and 14 are objected to for certain informalities. Claims 1 and 14 are amended to address these informalities. Therefore, Applicant respectfully asserts that the objection to claims 1 and 14 should be withdrawn and the claims passed onto allowance.

All Subject Matter Complies with 35 U.S.C. § 102(b)

Claims 1 and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,932,872 to *Price*. Applicant respectfully traverses the rejection for the following reasons.

Applicant respectfully submits that the Office Action has not established that *Price* anticipates each and every feature of Applicants' claimed invention and that all rejections under 35 U.S.C. § 102(b) should be withdrawn. Namely, Applicants contend that newly amended independent claims 1 and 14 recite the feature "when the focused position of a first observation point stored in the focused position storage device is shifted from the first observation point to a second observation point, along an X-Y plane perpendicular to the Z-axis, the focused position detection device sets the search range for the second observation point based on the stored focused position of the first observation point." (Emphasis added.) At least this feature is not disclosed or taught by *Price*.

In order to locate the best focus, *Price* uses the well-known binary search algorithm. See col. 9, lines 24-33 of *Price*. On the other hand, *Price* discloses that "[b]inary search autofocus is carried out by defining two focus positions between which focus is thought to exist and sequentially dividing the range in half to narrow down on the best focus." *Id.* at lines 26-32. The range is narrowed until it is smaller than the precision needed to identify best focus. *Id.* at lines 34-67. In other words, the search range is repeatedly divided or narrowed until focus is found. However, *Price* does not disclose or teach the above-described characteristic features of amended claims 1 and 14 where the first and second observation points are located along an X-Y

plane perpendicular to the Z-axis. Because *Price* does not disclose the above-mentioned feature, it cannot anticipate the invention recited in claims 1 and 14.

As pointed out in MPEP § 2131, a claim is anticipated by a prior art reference only if each and every element as set forth in the claim is found. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051 (Fed. Cir. 1987). Therefore, Applicant respectfully asserts that the rejection under 35 U.S.C. § 102(b) should be withdrawn because *Price* does not teach or suggest each feature of newly amended independent claims 1 and 14.

CONCLUSION

In view of the foregoing, Applicant respectfully requests the entry of this Amendment to place the application in clear condition for allowance or, in the alternative, in better form for appeal. Applicant also requests the Examiner's reconsideration and reexamination of the application and the timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant's undersigned representative to expedite prosecution.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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Dated: August 18, 2006

By: _____



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